LINDA NEWMAN CONSTRUCTION
COMPANY, INC.

VABCA-6307-6308

CONTRACT NO. V594C-485

VA MEDICAL CENTER
GAINESVILLE, FLORIDA

Linda Newman, President, Linda Newman Construction Company, Inc., Gainesville, Florida, for the Appellant.

Stacey North Willis, Esq., Trial Attorney; ***Charlma J. Quarles, Esq.,*** Deputy Assistant General Counsel; and ***Phillipa L. Anderson, Esq.,*** Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE SHERIDAN
ON GOVERNMENT'S MOTION TO REMOVE APPEALS
FROM ACCELERATED DOCKET

The Board has before it Government's Motion dated July 24, 2000, moving that the Board remove the above-captioned appeals from processing under VA Board Rule 12.3 accelerated procedures, asserting that hearing these appeals under accelerated rules violates the *Contract Disputes Act of 1978 (CDA)*, VA Board Rule 12.3, and would be "improper due to the interrelated nature of the appeals." The above-captioned appeals involve claims arising under Contract Number V594C-485 to Relocate Psychiatric Services to Building Number 38 at the VA Medical Center, Lake City, Florida.

The $42,533.73 Claim for Change Order Impact Docketed as VABCA-6307

On January 31, 2000, Appellant submitted a certified claim seeking an equitable adjustment of $42,533.73 asserting:

> All phases of LNCC's work [have] been completed, and the contract time has been extended 136 days due to changes initiated by the Department of Veterans Affairs. As you know, LNCC has not been compensated for the job expenses of remaining on the job during this period of time; in other words, the impact of these changes on unchanged contract work. Therefore, LNCC is requesting equitable adjustment to its contract in the amount of $42,533.73.
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> The costs which are itemized do NOT reflect direct costs or direct time required to perform the changed work, nor do they represent overhead or profit.

With the claim, via an attached letter also dated January 31, 2000, Appellant submitted "back-up supporting the request for equitable adjustment for extended general condition costs as result of the impact of change orders on unchanged work," that alleged that since the Contract was extended 136 days it experienced $42,533.73 in extra costs to the general conditions that were generated by the direct cost and labor burden for two employees, John LeFevers and Gil Cloer.

By Final Decision dated April 5, 2000, the Contracting Officer, Susan Little, denied the claim stating:

> Our letter dated May 19, 1999 informed you that the verbiage you requested regarding adjustments would not be included in our supplemental agreements. Supplemental agreements issued after that date included the standard verbiage. These supplemental agreements were signed by you or your designee, therefore indicating acceptance. My opinion is that by signing the supplemental agreements subsequent to this ruling and by performing the work agreed upon, you indicated agreement with my decision.

The $109,740.92 Claim for Delay Costs Docketed as VABCA-6308

LNCC submitted a second certified claim for $109,740.92 on January 31, 2000, asserting that "there was a significant increase in material and labor costs in many categories included in this project," that was attributable to the Government's failure to award the Contract and issue the Notice to Proceed until approximately a year after the project was bid. The Appellant avers that "[t]he inflationary costs between the anticipated latest start date inferable from the contract documents (12/26/97) which is represented in the NTP date of 1/5/98[,] and the additional costs to the actual start date which is represented in the NTP date of 8/27/98, is the costs that LNCC requests equitable adjustment for. Most of the request is on the behalf of many subcontractors." When submitting the claim LNCC also attached a letter that outlined its calculation of $109,740.92 in claimed costs. That letter asserted "an equitable adjustment for inflation" of $29,150.25 as the "[g]eneral contractor providing supervision and management, general construction work." LNCC also argues that various subcontractors are entitled to an adjustment for inflation: Allen Spear Construction Company (masonry - $8,105); Shea's Glass (glass and glazing- $4,725); Hufcor (accordion folding partitions - $237); Central Florida Drywall (exterior/interior metal studs/drywall/plaster - $44,186.18); Institutional Equipment Corporation (stainless steel shelving/medicine cabinets - $3,070); and Stratton Mechanical and Plumbing (mechanical and plumbing - $20,267.49).

Contracting Officer Susan Little denied the claim in its entirety on May 12, 2000, noting "the start date for this project was delayed due to the late completion of a domino project." CO Little went on to conclude:

> [LNCC] signed the Notice to Proceed (NTP) on August 27, 1998, as indicated in your letter. If you had a concern regarding material price inflation, you should not have signed the Notice to Proceed, nor commenced work under this contract until this issue was resolved. In your letter you made reference to a submitted schedule

> "that shows a Notice to Proceed date of 1/5/98". This point is moot since clause 852.236-84 indicates "the starting date of the schedule shall be the date the contractor receives the Notice to Proceed.

LNCC subsequently appealed both Final Decisions and on June 6, 2000, the appeal on the $42,533.73 change order impact claim was docketed as VABCA-6307 and the appeal on the $109,740.92 inflation claim was docketed as VABCA-6308. The Appellant elected accelerated processing for both appeals pursuant to VA Board Rule 12.3 and agreed to reduce the amount claimed in VABCA-6308 from $109,000 to $100,000 to meet the statutory threshold of $100,000 for accelerated processing.

By the Docketing Order issued on June 6, 2000, Government was instructed to file its Answer no later than July 24, 2000. Instead, "in lieu of an Answer" Government submitted a MOTION TO REMOVE APPEALS FROM ACCELERATED DOCKET. Government argues that hearing these appeals under the accelerated procedures violates the *CDA* and VA Board Rule 12.3, and "would be improper due to the interrelated nature of the appeals."

Other than asserting the "interrelated nature of the appeals," Government provides no compelling factual support for its position that these appeals are somehow connected. Our examination of the claims and the manner of their presentation leads to a contrary conclusion. These are discrete claims that do not arise from the same cause of action, and are based on differing operative facts and grounds for recovery. The claims were addressed in separate Final Decisions rendered by the Contracting Officer. In these circumstances, each claim qualifies for accelerated procedure. ***Airport Construction & Materials, Inc.***, ASBCA No. 37,255, 89-1 BCA¶ 21,191; ***Allied Repair Service, Inc.***, ASBCA No. 26619, 82-1 BCA¶ 15,785.

Regarding the appeals before us, VABCA-6307 is based on the impact of change orders on unchanged work, while VABCA-6308 seeks inflation costs for an alleged late start of the contract work. This is not an instance where full consolidation of the appeals is necessary to prevent contractor abuse of the accelerated procedure. Where, as here, the claims are factually and legally distinct, they may remain separate for the purpose of applying the accelerated procedure rules. ***ABB Susa, Inc.***, ASBCA No. 44849, 93-2 BCA¶ 25,786 *citing* ***Airport Construction***, at 106,951. The Board has partially consolidated the matter for the purpose of conducting a hearing in the interest of judicial economy and the convenience of the parties.

Decision

The Government's motion is DENIED.

DATE: **July 26, 2000**

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PATRICIA J. SHERIDAN
Administrative Judge

I Concur:

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JAMES K. ROBINSON
Administrative Judge